

[Waiver 1992-2]
W-92-30

MEMORANDUM

March 18, 1992

TO: Barbara Carrington, R.N.
Case Manager, Addiction, Victim and Mental Health Services

FROM: Jay L. Cohen, Chair
Montgomery County Ethics Commission

RE: Request for a Waiver

The Ethics Commission has reviewed your request for a waiver dated February 3, 1992. You have provided the Commission with the following facts:

You work part time for the County in the Department of Addiction, Victim, and Mental Health Services (DAVMHS). Specifically, you provide health care services in the County's Methadone to Abstinence Project. At the time you became a County employee, you continued employment as a nurse for Montgomery General Hospital in its detoxification unit.

After your employment with the County, the County entered into a contract with Montgomery General Hospital to provide services in connection with the County's Methadone to Abstinence Project. As a result, you perform essentially the same duties as a County employee and, though not simultaneously, as an employee of Montgomery General Hospital.

You do not serve in an administrative, supervisory, or management position with either the County or Montgomery General Hospital. Accordingly, you have no involvement in the award or administration of the contract between the County and Montgomery General Hospital.

You have indicated that your work at Montgomery General Hospital allows you to practice and implement skills and procedures that are necessary to rendering treatment to chemically addicted patients and that this makes you a more effective employee for the County. Dr. Frank Jones, Medical Director of the County's Methadone to Abstinence Project, agrees that your work at Montgomery General Hospital is beneficial to the performance of your duties for the County.

Finally, Herbert A. Holt, Director of DAVMHS, supports your request for a waiver to continue employment at Montgomery General Hospital. Holt's support, however, was predicated upon your agreement that while acting as a County employee you will not refer a client to the Montgomery General Hospital detoxification unit and when you are acting as a Montgomery General Hospital employee, you will not refer patients to the County's Methadone to Abstinence Project. Referral of patients to whom

you provide health care services at the County and Montgomery General Hospital must be handled by other employees.

Section 19A-12(a) of the Montgomery County Public Ethics Law provides that a public employee “must not engage in any other employment unless the employment is approved by the Commission.”¹ Section 19A-12(b) provides that a public employee must not be employed by an entity that contracts with the County agency with which the employee is affiliated unless the Ethics Commission grants a waiver. Finally, Section 11B-52 provides that an entity must not simultaneously employ a County employee and contract with the County.

Section 19A-8(a) authorizes the Ethics Commission to grant a waiver from the provisions of Section 11B-52 if the Commission determines:

- “(1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.”

In considering these criteria, the Commission finds the following factors persuasive:

1. The Director of DAVMHS supports your request to continue employment at Montgomery General Hospital.
2. You have agreed that you will not refer County clients to Montgomery General Hospital for detoxification or to the Methadone to Abstinence Project. Referral of your patients will be handled by other employees.
3. You do not serve in any supervisory or management position for either the County or Montgomery General Hospital. Accordingly, you have no responsibility with regard to the award or administration of the contract between the County and Montgomery General Hospital.
4. The Director of the Methadone to Abstinence Clinic for Montgomery County believes that your continued work experience at Montgomery General Hospital will be beneficial to the performance of your duties for the County.

In light of these factors, the Commission concludes that the criteria for granting a waiver of Section 11B-52 have been met.

Section 19A-8(b) authorizes the Commission to grant a waiver from the provisions of Section 19A-12(b) if the Commission finds:

¹ Unless otherwise indicated, section references are to the Montgomery County Code (1984).

- “(1) The waiver is needed to ensure that competent services to the County are timely and available;
- (2) Failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) The proposed employment is not likely to create an actual conflict of interest.”

In considering these criteria, the Commission finds that your employment with Montgomery General Hospital is not likely to create an actual conflict of interest because:

1. You do not serve in a management position for either Montgomery General Hospital or the County so that you have no involvement with the award or administration of the contract between Montgomery County and Montgomery General Hospital;
2. You have agreed, as a County employee, not to refer your patients to Montgomery General Hospital’s detoxification unit or, as a Montgomery General Hospital employee, to refer clients to the County’s Methadone to Abstinence Clinic; instead other employees will make referrals of your patients.

Accordingly, the Ethics Commission grants a waiver to allow you to be employed by Montgomery General Hospital in its detoxification unit subject to the following condition: As a Montgomery County employee, you must not refer County clients to the Montgomery General Hospital detoxification unit; as a Montgomery General Hospital employee, you must not refer hospital patients to the County’s Methadone to Abstinence Project. Instead, other employees must make referrals as appropriate.

The Commission trusts this memorandum has been responsive to your request for a waiver. If you have any questions regarding this matter, please contact the Commission.